

REMARKS

Claims 20, 22, 23, 25-29, 31, 33, 34, 36, 40-43, and 45-73 are pending. Claims 20, 22, 23, 25-29, 31, 33, 34, 36, 40-43, and 45-73 are rejected. By virtue of this response, claims 20, 22, 33, 34, 10-43, 48, 79, 55, 56, 61-66, 68-73 are amended, and claim 67 is canceled. Accordingly, claims 20, 22, 23, 25-29, 31, 33, 34, 36, 40-43, 45-66, and 68-73 are currently under consideration.

For the Examiner's convenience, the Applicant's remarks are presented in the same order in which they were raised in the Office Action.

Claim Rejections – 35 USC § 112

Claims 20, 22-23, 25-29, 31, 36, 40-43, 45-66 and 68-73 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite.

Claims 20, 22, and 48, and claims depending directly or indirectly therefrom, are rejected as being indefinite because of the use of the term "a derivative thereof." The term "a derivative thereof" is deleted from claims 20, 22, and 48, as well as from claims directly or indirectly dependent from claims 20, 22, and 48. This amendment is made solely to promote prosecution and without prejudice or disclaimer of any previously claimed subject matter.

Claim 29 is rejected as being indefinite because of the use of the terms "tumor necrosis factor derivative," "CD protein," "portion of an antibody," "fragment of gp120," "fragment of gp160," and "Fab fragment." It is submitted that the terms "tumor necrosis factor derivative," "CD protein," "portion of an antibody," "fragment of gp120," "fragment of gp160," and "Fab fragment," are definite and would be readily understood by one skilled in the art. A person having ordinary skill in art will recognize that the disclosed methods and formulations contemplate the use of myriad polypeptides and other biological agents.

Claim 49 is rejected as being indefinite because the claim recites a method for administering a pharmaceutical formulation of claim 20, while claim 20 is a method for administering a biologically active agent. Claim 49, as amended, now depends from claim 22, which relates to an injectable formulation. As such, claim 49 now recites: "A method for administering the injectable

formulation of claim 22, comprising: injecting the injectable formulation through a 23-gauge or smaller bore needle."

Claim 59 is rejected as being indefinite because of the use of the term "CD-3," "CD-4," "CD-8," and "CD-19." The Applicant respectfully traverses. The terms "CD-3," "CD-4," "CD-8," and "CD-19" make use of artisan-recognized nomenclature for certain cluster of differentiation ("CD") molecules. The CD nomenclature is established in the art. Thus the claims are definite and would be readily understood by one skilled in the art.

Double Patenting

Claims 22-23, 25-29, 31, 33, 34, 36, 42, 43, 45-47, 50-59 and 67-73 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 22-24 and 26-44 of co-pending application 11/614,462 (based on the amendment filed 4/9/08).

The Applicant will address this issue when claims of one or both applications are found allowable.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, the Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 146392002300. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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